

# EXHIBIT 1

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5 Attorneys for PLAINTIFF  
 JEFFREY L. VARNELL

Electronically  
**FILED**  
 by Superior Court of California, County of San Mateo  
 ON 1/17/2024  
 By /s/ Salote Alipate  
 Deputy Clerk

8 **SUPERIOR COURT OF CALIFORNIA**  
 9 **COUNTY OF SAN MATEO**

11 JEFFREY L. VARNELL, an individual,

12 PLAINTIFF,

13 vs.

14 NEWREZ LLC, a business entity; PHH  
 15 MORTGAGE CORPORATION, a business  
 entity; WELLS FARGO BANK, NATIONAL  
 16 ASSOCIATION AS TRUSTEE FOR OPTION  
 ONE MORTGAGE LOAN TRUST 2006-2,  
 17 ASSET-BACKED CERTIFICATES, SERIES  
 2006-2, BY PHH MORTGAGE  
 18 CORPORATION ITS ATTORNEY IN-FACT,  
 19 a business entity; WESTERN  
 PROGRESSIVE, LLC, a business entity; and  
 20 DOES 1-50; inclusive,

21 Defendants.

CASE NO.: 24-CIV-00284

**Complaint for Damages and Equitable Relief  
 for:**

1. Fraud
2. Negligent Misrepresentation
3. Promissory Estoppel
4. Wrongful Foreclosure
5. Violation of Business and Professions  
Code Section 17200 et seq.

**Demand for Jury Trial**

22 **PRELIMINARY STATEMENT**

24 1. PLAINTIFF, JEFFREY L. VARNELL (hereinafter "PLAINTIFF") is the victim of a  
 25 fraudulent forbearance and loan modification process that has now left PLAINTIFF facing a  
 26 wrongful foreclosure. After rejecting PLAINTIFF's offer to reinstate his loan and nearly two (2)  
 27 years of loan modification review, PLAINTIFF was finally informed that his lender was unable to  
 28 offer a loan modification due to a prior modification of his loan.

1     2.     The information about the PLAINTIFF's inability to receive a loan modification was  
 2     known to the loan servicer at the outset of the modification review. However, the loan servicer  
 3     did not advise the PLAINTIFF; instead, the PLAINTIFF was repeatedly told to apply again.  
 4     Subsequently, PLAINTIFF was placed in foreclosure after an insurmountable default had been  
 5     created through this process. Now, the PLAINTIFF faces an imminent foreclosure of his family  
 6     home.

7     3.     PLAINTIFF is the rightful owner of the real property commonly known as 3747 Hamilton  
 8     Way, Emerald Hills, CA 94062 ("Subject Property"). Venue is therefore proper in the County of  
 9     San Mateo.

#### 10     PARTIES

11    4.     PLAINTIFF is informed, believes, and thereon alleges that at all times mentioned herein,  
 12    Defendant NEWREZ LLC ("NEWREZ") is a diversified financial marketing and/or services  
 13    corporation engaged in residential mortgage banking and loan servicing. PLAINTIFF is  
 14    informed, believes, and thereon alleges that at all times mentioned herein, Defendant NEWREZ  
 15    regularly conducts business in the State of California. PLAINTIFF is informed, believes, and  
 16    thereon alleges that NEWREZ is the current servicer of PLAINTIFF's mortgage.

17    5.     PLAINTIFF is informed, believes, and thereon alleges that at all times mentioned herein,  
 18    Defendant PHH MORTGAGE CORPORATION ("PHH") is a diversified financial marketing  
 19    and/or services corporation engaged in residential mortgage banking and loan servicing.  
 20    PLAINTIFF is informed, believes, and thereon alleges that at all times mentioned herein,  
 21    Defendant PHH regularly conducts business in the State of California. PLAINTIFF is informed,  
 22    believes, and thereon alleges that PHH serviced PLAINTIFF's mortgage together with Defendant  
 23    NEWREZ who was acting as PHH's agent.

24    6.     PLAINTIFF is informed, believes, and thereon alleges that at all times mentioned herein,  
 25    Defendant WELLS FARGO BANK, NATIONAL ASSOCIATION AS TRUSTEE FOR  
 26    OPTION ONE MORTGAGE LOAN TRUST 2006-2, ASSET-BACKED CERTIFICATES,  
 27    SERIES 2006-2, BY PHH MORTGAGE CORPORATION ITS ATTORNEY IN-FACT  
 28    ("WELLS FARGO") is a diversified financial marketing and/or services corporation engaged in

1 residential mortgage banking and loan servicing. PLAINTIFF is informed, believes, and thereon  
 2 alleges that at all times mentioned herein, Defendant WELLS FARGO regularly conducts  
 3 business in the State of California. PLAINTIFF is informed, believes, and thereon alleges that  
 4 WELLS FARGO is the current master servicer and/or investor of PLAINTIFF's mortgage.

5 7. PLAINTIFF is informed, believes, and thereon alleges that at all times mentioned herein,  
 6 Defendant WESTERN PROGRESSIVE, LLC ("WESTERN PROGRESSIVE") is a services  
 7 company engaged primarily in providing trustee services to residential mortgage banks and/or  
 8 related businesses. PLAINTIFF is informed, believes, and thereon alleges that at all times  
 9 mentioned herein WESTERN PROGRESSIVE regularly conducts business in the State of  
 10 California.

11 8. PLAINTIFF is ignorant of the true names and capacities of the Defendants sued herein  
 12 under the fictitious names Does 1 through 50, inclusive, and PLAINTIFF will amend this  
 13 Complaint to allege such names and capacities as soon as they are ascertained. Each of said  
 14 fictitiously named Defendant is responsible in some manner for the wrongful acts complained of  
 15 herein.

16 9. PLAINTIFF is informed, believes and thereon alleges that at all times herein mentioned,  
 17 each of the Defendants was acting as the agent, servant, employee, partner, co-conspirator, and/or  
 18 joint venturer of each of the remaining Defendants, and was acting in concert with each  
 19 remaining Defendant in doing the things herein alleged, and, additionally has inherited any  
 20 violations and/or the liability of their predecessors-in-interest, and has also passed on liability to  
 21 their successors-in-interest, and at all times was acting within the course and scope of such  
 22 agency, employment, partnership, and/or concert of action.

### 23 **STATEMENT OF FACTS**

24 10. PLAINTIFF took out the Subject Loan in the amount of \$900,000.00 and secured by the  
 25 Subject Property in 2005 with Option One Mortgage Corporation. Subsequently, Defendants  
 26 PHH and NEWREZ became the servicers of PLAINTIFF's mortgage while Defendant WELLS  
 27 FARGO became the master servicer and/or investor. The Deed of Trust contains a provision for  
 28 attorney's fees.

1 11. From 2005 through 2019 PLAINTIFF made all his monthly mortgage payments on the  
2 loan.

3 12. In or around March 2020, due to the global COVID-19 pandemic, PLAINTIFF began  
4 experiencing financial hardships. PLAINTIFF was self-employed and owned an engineering  
5 company. The economic downturn caused a substantial reduction in PLAINTIFF's income,  
6 investments, and stocks accounts. As a result of these hardships, PLAINTIFF fell behind on  
7 mortgage payments, missing his October 2019 payment.

8 13. In or around April 2020, Defendant PHH contacted PLAINTIFF, to inform him about his  
9 eligibility for a forbearance agreement due to COVID-19 ("Forbearance Agreement"). PHH  
10 informed PLAINTIFF that the Forbearance Agreement was a government relief program  
11 temporarily relieving him of mortgage payment obligations with no late fees during forbearance  
12 period. PLAINTIFF was promised a loss mitigation review after the forbearance agreement ended  
13 to determine a permanent solution like a loan modification. PLAINTIFF accepted the  
14 Forbearance Agreement, and subsequently the Forbearance Agreement was automatically  
15 extended by PHH every 90 days.

16 14. In July 2022, PLAINTIFF contacted PHH to resume his mortgage payments, requesting a  
17 repayment plan and sending a \$100,000.00 check to cover the mortgage payments that were not  
18 made during the Forbearance Agreement. However, Defendant PHH returned PLAINTIFF's  
19 \$100,000.00 payment and instead steered PLAINTIFF into applying for a permanent loan  
20 modification. PHH told PLAINTIFF that a loan modification was a better option for him and  
21 provided the necessary paperwork. PLAINTIFF complied and sent all documents requested.

22 15. Despite complying and submitting all requested documents, PLAINTIFF began  
23 experiencing continuous requests for additional information from Defendants PHH and  
24 NEWREZ. Defendants PHH and NEWREZ appeared on various loan modification documents  
25 provided to PLAINTIFF during this time period. Both PHH and NEWREZ requested additional  
26 information from PLAINTIFF despite him complying and submitting everything again and again.

27 16. In or around February 2023, nearly seven (7) months after the start of the loan  
28 modification process, PLAINTIFF's application was denied. The reason for denial was an

1 incomplete package, despite all requested items having been sent by the PLAINTIFF on  
2 numerous occasions. Despite PLAINTIFF's attempts to obtain information regarding the alleged  
3 incompleteness of his modification application, he did not receive any answers from Defendants  
4 PHH or NEWREZ.

5 17. On April 26, 2023, Defendants PHH and NEWREZ reached out to PLAINTIFF again  
6 urging him to apply for a loan modification. PHH sent a new loan modification package to  
7 PLAINTIFF along with a letter stating in part: "*PHH Mortgage would like to offer the*  
8 *accountholder a special opportunity to apply for a modification and other loss mitigation*  
9 *options.*" The loan modification application had 'NEWREZ C/O PHH Mortgage Services' listed  
10 on the caption. PLAINTIFF contacted PHH, and was told to complete the application, citing  
11 "changes in guidelines." PLAINTIFF complied once again, submitting a comprehensive loan  
12 modification package.

13 18. On or around August 29, 2023, PHH caused defendant WESTERN PROGRESSIVE to  
14 record a Notice of Default and Election to Sell Under Deed of Trust ("NOD") on the Subject  
15 Property. This NOD was recorded while PLAINTIFF was undergoing active loan modification  
16 review with PHH.

17 19. By September 8, 2023, a Single Point of Contact (SPOC) named Chabungbam Somisingh  
18 was assigned to PLAINTIFF's file at PHH.

19 20. On September 14, 2023, despite remaining under loan modification review for many  
20 months, PLAINTIFF received another denial from PHH. According to this letter, PHH denied the  
21 loan modification application, due to a prior loan modification of PLAINTIFF's loan.  
22 Additionally, the denial letter stated that PLAINTIFF was denied for the Helping Homeowners  
23 Modification, due to being 90 days delinquent. The denial further stated that PHH did not  
24 evaluate PLAINTIFF for a Repayment Plan. PLAINTIFF was shocked since PHH and NEWREZ  
25 knew back in July 2022 regarding any prior loan modification of PLAINTIFF's loan. Moreover,  
26 Defendants knew about PLAINTIFF being 90 days delinquent. Yet, PHH rejected his attempt at  
27 reinstatement of the loan back in July 2022 and steered him into a loan modification review for a  
28 modification that it could not offer to begin with.

1 21. PLAINTIFF immediately contacted his SPOC, Chabungbam Somisingh, requesting a  
2 Repayment Plan and offered to bring his account fully current in two (2) lump sum payments to  
3 PHH. However, Chabungbam Somisingh advised the PLAINTIFF that a Repayment Plan was not  
4 an option for PLAINTIFF without providing any explanation.

5 22. In October 2023, PHH once again contacted PLAINTIFF and encouraged him to apply for  
6 a loan modification and to “explore loss mitigation options.” Desperate, since PHH would not  
7 accept his offers bring the loan current in two (2) payments, PLAINTIFF completed the  
8 application, hopeful that PHH might now consider allowing him to proceed with a Repayment  
9 Plan, a loss mitigation option provided by PHH to homeowners like PLAINTIFF.

10 23. On November 1, 2023, PHH and NEWREZ again denied PLAINTIFF for loan  
11 modification, citing prior modification of PLAINTIFF’s loan. Again, PLAINTIFF was also  
12 denied for the Helping Homeowners Modification due to PLAINTIFF being 90 days behind.  
13 Additionally, PHH declared in the denial letter that they did not evaluate PLAINTIFF for a  
14 Repayment Plan. The denial granted PLAINTIFF the right to appeal PHH’s decision within 30  
15 days of November 1, 2023. This letter, which actually came from NEWREZ, advised  
16 PLAINTIFF to submit his appeal to PHH Mortgage Services.

17 24. PLAINTIFF submitted an appeal to PHH Mortgage Services, and again offered  
18 \$100,000.00 towards a Repayment Plan. However, on November 11, 2023, and November 28,  
19 2023, PHH sent notices to the PLAINTIFF, indicating that they would no longer evaluate loss  
20 mitigation options. These notices again included NEWREZ on the caption.

21 25. PHH and NEWREZ subjected PLAINTIFF to an extended two-year review, increasing  
22 PLAINTIFF’S late fees, foreclosure fees, and property evaluation fees, thereby creating an  
23 insurmountable delinquency. Defendants did not advise PLAINTIFF that a loan modification was  
24 not an option due to prior modification of PLAINTIFF’s loan. In addition, Defendants failed to  
25 explore all viable loss mitigation avenues and openly admitted to not evaluating PLAINTIFF for  
26 a Repayment Plan which is also an advertised loss mitigation option. Furthermore, Defendants  
27 PHH and NEWREZ, while aware that they could not offer a loan modification, not only rejected  
28 PLAINTIFF’s \$100,000.00 payment but also commenced foreclosure proceedings while



1 PLAINTIFF was still under review for the loan modification.

2 26. PLAINTIFF is now in active foreclosure with no possible solution to the loan  
3 modification or reinstatement of the Subject Loan.

4 **FIRST CAUSE OF ACTION**

5 **Fraud**

(Against NEWREZ, PHH, WELLS FARGO and Does 1-50)

6 27. PLAINTIFF incorporates all allegations of this Complaint and re-alleges them as though  
7 they were fully set forth herein.

8 28. The conduct of Defendants NEWREZ and PHH, as alleged above, constitutes fraud.

9 29. Defendants NEWREZ and PHH knowingly and recklessly made false and misleading  
10 statements. PLAINTIFF relied on these statements to their detriment and suffered damages as a  
11 result.

12 30. The actions of Defendants NEWREZ and PHH, as indicated above, constitute a  
13 misrepresentation of material fact, a concealment of material fact, and/or a false promise.  
14 Defendants NEWREZ and PHH by and through its authorized representatives and  
15 correspondence misrepresented to PLAINTIFF the availability of loan modification and other loss  
16 mitigation options for PLAINTIFF's loan. Defendants NEWREZ and PHH rejected  
17 PLAINTIFF's attempts to bring the loan current and steered PLAINTIFF into loan modification  
18 review following the Forbearance Agreement only to engineer an insurmountable default that  
19 would allow NEWREZ and PHH to foreclose on the Subject Property.

20 31. In July 2022, PLAINTIFF contacted PHH to resume his mortgage payments, requesting a  
21 repayment plan and sending a \$100,000.00 check to cover the mortgage payments that were not  
22 made during the Forbearance Agreement. However, Defendant PHH returned PLAINTIFF's  
23 \$100,000.00 payment and instead steered PLAINTIFF into applying for a permanent loan  
24 modification. PHH told PLAINTIFF that a loan modification was a better option for him and  
25 provided the necessary paperwork. PLAINTIFF complied and sent all documents requested.

26 32. Despite complying and submitting all requested documents, PLAINTIFF began  
27 experiencing continuous requests for additional information from Defendants PHH and  
28 NEWREZ. Defendants PHH and NEWREZ appeared on various loan modification documents



1 provided to PLAINTIFF during this time period. Both PHH and NEWREZ requested additional  
2 information from PLAINTIFF despite him complying and submitting everything again and again.

3 33. In or around February 2023, nearly seven (7) months after the start of the loan  
4 modification process, PLAINTIFF's application was denied. The reason for denial was an  
5 incomplete package, despite all requested items having been sent by the PLAINTIFF on  
6 numerous occasions. Despite PLAINTIFF's attempts to obtain information regarding the alleged  
7 incompleteness of his modification application, he did not receive any answers from Defendants  
8 PHH or NEWREZ.

9 34. On April 26, 2023, Defendants PHH and NEWREZ reached out to PLAINTIFF again  
10 urging him to apply for a loan modification. PHH sent a new loan modification package to  
11 PLAINTIFF along with a letter stating in part: "*PHH Mortgage would like to offer the*  
12 *accountholder a special opportunity to apply for a modification and other loss mitigation*  
13 *options.*"

14 35. On September 14, 2023, despite remaining under loan modification review for many  
15 months, PLAINTIFF received another denial from PHH. According to this letter, PHH denied the  
16 loan modification application, due to a prior loan modification of PLAINTIFF's loan.  
17 Additionally, the denial letter stated that PLAINTIFF was denied for the Helping Homeowners  
18 Modification, due to being 90 days delinquent. The denial further stated that PHH did not  
19 evaluate PLAINTIFF for a Repayment Plan. PLAINTIFF was shocked since PHH and NEWREZ  
20 knew back in July 2022 regarding any prior loan modification of PLAINTIFF's loan. Moreover,  
21 Defendants knew about PLAINTIFF being 90 days delinquent. Yet, PHH rejected his attempt at  
22 reinstatement of the loan back in July 2022 and steered him into a loan modification review for a  
23 modification that it could not offer to begin with.

24 36. Defendants NEWREZ and PHH knew that their statements made in writing and through  
25 its various authorized representatives, were misrepresentations. NEWREZ and PHH has led  
26 PLAINTIFF through a lengthy process that resulted in an insurmountable default against the  
27 Subject Property that was engineered by the fraudulent actions of NEWREZ and PHH.

28 ///

1 37. Defendant NEWREZ and PHH continuously strung PLAINTIFF along with the belief his  
2 loan would be modified by requesting additional documents and misleading PLAINTIFF to  
3 believe that compliance with NEWREZ's and PHH's instructions would result in a permanent  
4 loan modification. Moreover, every time that PLAINTIFF offered to pay back any delinquency in  
5 two (2) lump sum payments and even sent a check for \$100,000.00, NEWREZ and PHH rebuffed  
6 the repayment and steered him into the loan modification review instead. Through its action of  
7 lulling PLAINTIFF into believing he would receive a loan modification, Defendants NEWREZ  
8 and PHH engineered an insurmountable default that NEWREZ and PHH knew PLAINTIFF  
9 would be unable to cure.

10 38. All of these representations made by Defendant NEWREZ and PHH and its agents were  
11 false and were done with the intent to create a situation where PLAINTIFF would be unable to  
12 pay any arrearage due to excessive fees, costs and penalties that NEWREZ and PHH would add  
13 to the loan. In doing so, NEWREZ and PHH intended to wrongfully take title to PLAINTIFF's  
14 property and thereby convert all of PLAINTIFF's equity into profit for NEWREZ, PHH and  
15 WELLS FARGO.

16 39. PLAINTIFF justifiably relied on the numerous representations of NEWREZ and PHH in  
17 person, on the phone, and in its letters, regarding his ability to obtain a loan modification, by  
18 filling-out form applications, and by providing NEWREZ and PHH with voluminous financial  
19 information that NEWREZ and PHH requested. At all related times, NEWREZ and PHH knew or  
20 should have known that PLAINTIFF would justifiably rely on their representations about the  
21 availability of loan modification(s) made in writing, in person and on the phone.

22 40. PHH and NEWREZ subjected PLAINTIFF to an extended two-year review, increasing  
23 PLAINTIFF'S late fees, foreclosure fees, and property evaluation fees, thereby creating an  
24 insurmountable delinquency. Defendants did not advise PLAINTIFF that a loan modification was  
25 not an option due to prior modification of PLAINTIFF's loan. In addition, Defendants failed to  
26 explore all viable loss mitigation avenues and openly admitted to not evaluating PLAINTIFF for  
27 a Repayment Plan which is also an advertised loss mitigation option. Furthermore, Defendants  
28 PHH and NEWREZ, while aware that they could not offer a loan modification, not only rejected

1 PLAINTIFF's \$100,000.00 payment but also commenced foreclosure proceedings while  
 2 PLAINTIFF was still under review for the loan modification.

3 41. PLAINTIFF was damaged due to this reliance.

4 42. As a result of PLAINTIFF's reliance, PLAINTIFF is entitled to actual damages including,  
 5 but not limited to, loss of money and property including but not limited to losses through  
 6 overcharges and late fees, incurred attorneys' fees and costs to save his home, a loss of reputation  
 7 and goodwill, destruction of credit, and severe emotional distress, according to proof at trial but  
 8 within the jurisdiction of this Court.

9 43. Defendant WELLS FARGO aided and abetted Defendants NEWREZ and PHH by  
 10 encouraging and incentivizing the fraudulent conduct of NEWREZ and PHH.

11 44. For these reasons, Defendant is guilty of malice, fraud and/or oppression, as defined in  
 12 California Civil Code § 3294. Defendant's actions were malicious and willful, in conscious  
 13 disregard of the rights and safety of PLAINTIFF and calculated to injure PLAINTIFF.  
 14 Accordingly, PLAINTIFF is entitled to recover punitive damages from Defendants pursuant to  
 15 California Civil Code § 3294, in an amount according to proof.

16 **SECOND CAUSE OF ACTION**  
 17 **Negligent Misrepresentation**  
 (Against NEWREZ, PHH and Does 1-50)

18 45. PLAINTIFF incorporates all allegations of this Complaint and re-alleges them as though  
 19 they were fully set forth herein.

20 46. Defendants NEWREZ and PHH owed a duty to PLAINTIFF to not make material  
 21 misrepresentations.

22 47. As indicated above and herein, Defendants made certain representations to PLAINTIFF  
 23 (either intentionally or negligently) and asserted them to be true.

24 48. NEWREZ'S and PHH'S assertions were not true.

25 49. Defendants had no reasonable grounds for believing the representations to be true when  
 26 they made them. Instead, all along NEWREZ and PHH intended to deny PLAINTIFF's loan  
 27 modification and strung him along in order to inflate the default created on PLAINTIFF's loan.

28 50. Defendants knew that they could not provide a loan modification to PLAINTIFF due to

1 prior modification of the loan. However, Defendants did not advise PLAINTIFF that a loan  
2 modification was not an option due to prior modification of PLAINTIFF's loan. On the contrary,  
3 Defendants told PLAINTIFF that loan modification was his best option and steered PLAINTIFF  
4 into loan modification review after rejecting his offer to repay the delinquency in two (2) lump  
5 sum payments. In addition, Defendants failed to explore all viable loss mitigation avenues and  
6 openly admitted to not evaluating PLAINTIFF for a Repayment Plan which is also an advertised  
7 loss mitigation option. Furthermore, Defendants PHH and NEWREZ, while aware that they could  
8 not offer a loan modification, not only rejected PLAINTIFF's \$100,000.00 payment but also  
9 commenced foreclosure proceedings while PLAINTIFF was still under review for the loan  
10 modification.

11 51. Defendants intended that PLAINTIFF rely upon their representations, as both Defendants  
12 NEWREZ and PHH sent PLAINTIFF correspondence and other documentation regarding the  
13 loan modification review. Even after PLAINTIFF's application was denied in February 2023,  
14 purportedly due to an incomplete package, Defendant NEWREZ and PHH again urged  
15 PLAINTIFF to reapply for loan modification on April 26, 2023.

16 52. PLAINTIFF's reliance on Defendants' representations was a substantial factor in causing  
17 him harm. PLAINTIFF justifiably relied on the numerous representations of NEWREZ and PHH  
18 in person, on the phone, and in their letters, by continuing with the loan modification process and  
19 continuing to wait on answers from NEWREZ and PHH regarding final approval and further  
20 documents that were needed. At all related times, NEWREZ and PHH knew or should have  
21 known that PLAINTIFF would justifiably rely on their representations about the status of his loan  
22 and the loan modification made in writing, in person and on the phone.

23 53. PLAINTIFF has been damaged as a result of Defendants' misrepresentations, as indicated  
24 herein. As a result of PLAINTIFF's reliance, PLAINTIFF suffered damages including but not  
25 limited to, loss of money and property including but not limited to losses through overcharges and  
26 late fees, incurred attorneys' fees and costs to save his home, a loss of reputation and goodwill,  
27 destruction of credit and severe emotional distress, according to proof at trial but within the  
28 jurisdiction of this Court.

**THIRD CAUSE OF ACTION****Promissory Estoppel**

(Against NEWREZ, PHH and Does 1-50)

54. PLAINTIFF incorporates all allegations of this Complaint and re-alleges them as though they were fully set forth herein.

55. As indicated above, Defendants NEWREZ and PHH, through various authorized representatives made certain promises to PLAINTIFF regarding the Forbearance Agreement and the subsequent modification of PLAINTIFF's loan. Defendants NEWREZ and PHH made certain promises regarding the availability of loan modification as they told PLAINTIFF it was his best option.

56. Thereafter, during the review process, NEWREZ and PHH made certain promises to PLAINTIFF that if he provided additional documents and information to NEWREZ, his application would be reviewed for permanent loan modification. In addition, NEWREZ and PHH made promises that PLAINTIFF's account was under review while they were proceeding with initiating foreclosure on PLAINTIFF's property.

57. In July 2022, PLAINTIFF contacted PHH to resume his mortgage payments, requesting a repayment plan and sending a \$100,000.00 check to cover the mortgage payments that were not made during the Forbearance Agreement. However, Defendant PHH returned PLAINTIFF's \$100,000.00 payment and instead steered PLAINTIFF into applying for a permanent loan modification. PHH told PLAINTIFF that a loan modification was a better option for him and provided the necessary paperwork.

58. Despite complying and submitting all requested documents, PLAINTIFF began experiencing continuous requests for additional information from Defendants PHH and NEWREZ for the purported loan modification. And despite several denials, Defendants continually advised PLAINTIFF to apply again specifically citing to "changes in guidelines."

59. On April 26, 2023, Defendants PHH and NEWREZ reached out to PLAINTIFF again urging him to apply for a loan modification again. PHH sent a new loan modification package to PLAINTIFF along with a letter stating in part: *"PHH Mortgage would like to offer the accountholder a special opportunity to apply for a modification and other loss mitigation*

1 *options.”*

2 60. In October 2023, PHH once again contacted PLAINTIFF and encouraged him to apply for  
3 a loan modification and to “explore loss mitigation options.”

4 61. Such promises were reasonably expected by Defendants to induce action or forbearance  
5 by PLAINTIFF.

6 62. PLAINTIFF relied on Defendants’ promises by agreeing to continue with the loan  
7 modification review as instructed by NEWREZ and PHH and by continually providing  
8 Defendants with voluminous financial information and other documentation. In spite of this fact,  
9 PLAINTIFF never received his loan modification. In fact, Defendants did not advise PLAINTIFF  
10 that a loan modification was not an option at all due to prior modification of PLAINTIFF’s loan.

11 63. PHH and NEWREZ subjected PLAINTIFF to an extended two-year review, increasing  
12 PLAINTIFF’S late fees, foreclosure fees, and property evaluation fees, thereby creating an  
13 insurmountable delinquency.

14 64. As a result of Defendant’s actions, PLAINTIFF suffered damages including substantial  
15 arrears and fees that accrued due to Defendants wrongfully failing to offer the permanent  
16 modification.

17 **FOURTH CAUSE OF ACTION**

18 **Wrongful Foreclosure**

19 (Against All Defendants and Does 1-50)

20 65. PLAINTIFF incorporates all allegations of this Complaint and re-alleges them as though  
21 they were fully set forth herein.

22 66. Defendants’ conduct, as alleged above, constitutes acts or practices of a wrongful  
23 foreclosure.

24 67. The entire course of action of Defendants NEWREZ and PHH was designed to orchestrate  
25 an insurmountable default. It was NEWREZ and PHH who instructed PLAINTIFF to enter into  
26 the Forbearance Agreement and subsequently the loss mitigation review for permanent loan  
27 modification. When PLAINTIFF sent his check for \$100,000.00 and offered to bring the loan  
28 current via two (2) payments, NEWREZ and PHH rejected his efforts and advised him that loan



1 modification was his best option. Defendants then steered PLAINTIFF into the loan modification  
2 review for a loan modification that was non-existent.

3 68. PHH and NEWREZ subjected PLAINTIFF to an extended two-year review, increasing  
4 PLAINTIFF'S late fees, foreclosure fees, and property evaluation fees, thereby creating an  
5 insurmountable delinquency. They also interfered with PLAINTIFF's attempts to repay the  
6 delinquency when they rejected his \$100,000.00 and offer to repay the delinquency in two (2)  
7 payments.

8 69. On April 26, 2023, Defendants PHH and NEWREZ reached out to PLAINTIFF again  
9 urging him to apply for a loan modification. PHH sent a new loan modification package to  
10 PLAINTIFF along with a letter stating in part: "PHH Mortgage would like to offer the  
11 accountholder a special opportunity to apply for a modification and other loss mitigation  
12 options." The loan modification application had 'NEWREZ C/O PHH Mortgage Services' listed  
13 on the caption. PLAINTIFF contacted PHH, and was told to complete the application, citing  
14 "changes in guidelines." PLAINTIFF complied once again, submitting a comprehensive loan  
15 modification package.

16 70. On or around August 29, 2023, PHH caused Defendant WESTERN PROGRESSIVE to  
17 record a Notice of Default and Election to Sell ("NOD") on the Subject Property. This NOD was  
18 recorded while PLAINTIFF was undergoing active loan modification review with PHH.

19 71. Defendant WELLS FARGO'S conduct, as alleged above, constitutes acts or practices of a  
20 wrongful foreclosure.

21 72. Defendant WELLS FARGO aided and abetted Defendant NEWREZ by encouraging and  
22 incentivizing the fraudulent conduct of NEWREZ and PHH.

23 73. As a proximate result of this conduct, PLAINTIFF has suffered, and will continue to  
24 suffer, substantial and irreparable injury which entitles PLAINTIFF to an award of damages in an  
25 amount to be established at trial as well as attorney's fees.

26 74. PLAINTIFF is entitled to actual damages including, but not limited to, loss of money and  
27 property including but not limited to losses through overcharges, incurred attorneys' fees and  
28 costs to save his home, a loss of reputation and goodwill, destruction of credit, and severe



1 emotional distress, according to proof at trial but within the jurisdiction of this Court.

2 75. For these reasons, Defendants are guilty of malice, fraud and/or oppression, as defined in  
 3 California Civil Code § 3294. Defendants' actions were malicious and willful, in conscious  
 4 disregard of the rights and safety of PLAINTIFF and calculated to injure PLAINTIFF.  
 5 Accordingly, PLAINTIFF is entitled to recover punitive damages from Defendants pursuant to  
 6 California Civil Code § 3294, in an amount according to proof.

7 **FIFTH CAUSE OF ACTION**

8 **Violations of the Business and Professions Code Section 17200 et seq.**  
 (Against all Defendants and Does 1-50)

9 76. PLAINTIFF incorporates all allegations of this Complaint and re-alleges them as though  
 10 they were fully set forth herein.

11 77. Defendants' conduct, as alleged above, constitutes unlawful, unfair, and fraudulent  
 12 business practices, as defined in the California Business and Professions Code § 17200 *et seq.* As  
 13 applied, § 17200 *et seq.*, borrows violations from other statutes and laws.

14 78. As indicated herein in PLAINTIFF'S Causes of Action for Fraud, Negligent  
 15 Misrepresentation, and Wrongful Foreclosure, the actions of Defendants constitute unlawful,  
 16 unfair and/or fraudulent business practices, as defined in the California Business and Professions  
 17 Code § 17200 *et seq.*

18 79. Defendants are in the routine practice of fraudulently and/or negligently servicing home  
 19 mortgage loans without informing homeowners of the potential negative consequences connected  
 20 with the loan modification process.

21 80. In addition, Defendants' business practices fail to provide adequate information relating to  
 22 the status of loan modifications and accrual of arrears. Specifically, in this matter, Defendants  
 23 PHH and NEWREZ failed to tell PLAINTIFF at the start of the loan modification review process  
 24 in July 2022, that a loan modification was not an available option for his loan.

25 81. Homeowners are left in a position of constantly having to contact Defendants for any  
 26 information relating to their loan modification review. When homeowners do receive updates, the  
 27 information provided is often incomplete or misleading.

28 ///

1 82. PLAINTIFF alleges on information and belief that Defendants, NEWREZ, PHH and  
 2 WELLS FARGO in so acting in this case and with respect to numerous other mortgages or Deed  
 3 of Trust security instruments engage in a pattern and practice of utilizing the non-judicial  
 4 foreclosure and eviction procedures of California to foreclose on properties when they do not  
 5 have the right to do so.

6 83. Defendant WELLS FARGO aided and abetted Defendants NEWREZ and PHH by  
 7 encouraging and incentivizing the fraudulent conduct of NEWREZ and PHH.

8 84. In furtherance of Defendants' common plan and scheme, as alleged, including but not  
 9 limited to false representations regarding loan modification review, approval, deadlines and other  
 10 promises, Defendants, and each of them, committed an unlawful, unfair, deceptive or fraudulent  
 11 business practice.

12 85. As a result of Defendants' wrongful conduct, PLAINTIFF has suffered various damages  
 13 including but not limited to losses through overcharges, incurred attorneys' fees and costs to save  
 14 his home, a loss of reputation and goodwill, destruction of credit, severe emotional distress and  
 15 depression, according to proof at trial but within the jurisdiction of this Court.

16 86. PLAINTIFF seeks injunctive relief enjoining Defendants from engaging in the unfair  
 17 business practices described herein.

18 87. PLAINTIFF further seeks restitution, disgorgement of sums wrongfully obtained, costs of  
 19 suit, reasonable attorneys' fees, and such other and further relief as the Court may deem just and  
 20 proper.

21 **DEMAND FOR JURY TRIAL AND PRAYER FOR DAMAGES**

22 WHEREFORE, PLAINTIFF JEFFREY L. VARNELL demands a trial by jury.

23 PLAINTIFF prays for judgment and order against Defendants, as follows:

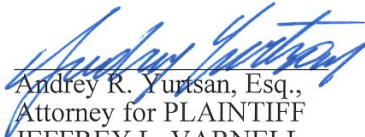
- 24 1. That judgment is entered in PLAINTIFF's favor and against Defendants, and each of  
 25 them;
- 26 2. For an order requiring Defendants to show cause, if they have any, why they should not be  
 27 enjoined as set forth below, during the pendency of the action;
- 28 3. For a temporary restraining order, preliminary and permanent injunction preventing  
 Defendants, or anyone acting in concert with them, from causing PLAINTIFF's Property  
 to be sold, assigned, transferred to a third-party, or taken by anyone or any entity;

4. For an order stating that Defendants engaged in unfair business practices;
5. For damages, disgorgement, and injunctive relief;
6. For compensatory and statutory damages, attorneys' fees, and costs according to proof at trial;
7. For exemplary damages in an amount sufficient to punish Defendants' wrongful conduct and deter future misconduct;
8. For such other and further relief as the Court may deem just and proper.

DATED: January 17, 2024

Respectfully submitted,

YURTSAN LAW FIRM PC

  
Andrey R. Yurtsan, Esq.,  
Attorney for PLAINTIFF  
JEFFREY L. VARNELL

# **EXHIBIT 2**

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Robert W. Norman, Jr. (SBN 232470)  
 Darlene Morris (SBN 340727)  
 HOUSER LLP  
 9970 Research Drive  
 Irvine, California 92618  
 Telephone: (949) 679-1111  
 Facsimile: (949) 679-1112  
 E-Mail: [dmorris@houser-law.com](mailto:dmorris@houser-law.com)

**Electronically  
 FILED**  
 by Superior Court of California, County of San Mateo  
 ON **2/27/2024**  
 By **/s/ Una Finau**  
 Deputy Clerk

Attorneys for Defendants,  
 PHH Mortgage Corporation; NewRez LLC; Wells Fargo Bank, National Association as Trustee  
 for Option One Mortgage Loan Trust 2006-2, Asset-Backed Certificates, Series 2006-2; and  
 Western Progressive, LLC

**SUPERIOR COURT OF CALIFORNIA**

**COUNTY OF SAN MATEO**

JEFFREY L. VARNELL, an individual,

Plaintiff,

v.

NEWREZ LLC, a business entity; PHH  
 MORTGAGE CORPORATION, a business  
 entity; WELLS FARGO BANK, NATIONAL  
 ASSOCIATION AS TRUSTEE FOR  
 OPTION ONE MORTGAGE LOAN TRUST  
 2006-2, ASSET-BACKED CERTIFICATES,  
 SERIES 2006-2, BY PHH MORTGAGE  
 CORPORATION ITS ATTORNEY IN-  
 FACT, a business entity; WESTERN  
 PROGRESSIVE, LLC, a business entity; and  
 DOES 1-50, inclusive.

Defendants.

Case No.: 24-CIV-00284

Judge: Hon. Susan Greenberg  
 Dept.: 3

**DECLARATION OF NON-MONETARY  
 STATUS OF DEFENDANT WESTERN  
 PROGRESSIVE, LLC PURSUANT TO  
 CALIFORNIA CIVIL CODE SECTION  
 2924I**

**TO THE HONORABLE COURT, ALL PARTIES HEREIN AND/OR THEIR  
 ATTORNEYS OF RECORD AND TO ALL INTERESTED PARTIES:**

NOTICE IS HEREBY GIVEN THAT Defendant Western Progressive Trustee, LLC d/b/a  
 Western Progressive, LLC ("Western Progressive") hereby submits the attached Declaration of  
 Non-Monetary Status pursuant to California Civil Code section 2924I.

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1. Cal. Civ. Code section 2924l provides in the pertinent part that:

[I]n the event that the trustee maintains a reasonable belief that it has been named in the action or proceeding solely in its capacity as trustee, and not arising out of any wrongful acts or omissions on its part in the performance of its duties as trustee then at any time, the trustee may file a declaration of nonmonetary status.

2. Western Progressive is the trustee under the Deed of Trust, which is the subject of the instant action, against the real property commonly known as 3747 Hamilton Way, Redwood City, CA 94062 (the "Property"). Said Deed of Trust was recorded on December 30, 2005, as document no. 2005-227129, in the San Mateo County Recorder's Office.

3. Western Progressive believes that it has been named in the above-entitled action solely in its capacity as the trustee under the Deed of Trust. Such belief is based upon the pleadings on file and operative complaint, which fail to specifically enumerate any act or acts by Western Progressive that would imply any liability on its part. *See* attached Declaration.

4. Western Progressive agrees to be bound by whatever non-monetary order or judgment is issued by the Court regarding the Deed of Trust.

Dated: February 27, 2024

**HOUSER LLP**



Robert W. Norman

Darlene M. Morris

Attorneys for Defendants,

PHH Mortgage Corporation; NewRez LLC;

Wells Fargo Bank, National Association as

Trustee for Option One Mortgage Loan

Trust 2006-2, Asset-Backed Certificates,

Series 2006-2; and Western Progressive,

LLC

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1. I am over 18 years of age, suffer from no legal disabilities and am otherwise competent to make this declaration. The matters set forth herein are true based upon my personal knowledge and, if called to testify in this matter, I could and would competently testify under oath to the facts and circumstances stated herein.

3. By written instrument recorded August 29, 2023, the beneficiary under the Deed of Trust substituted Western Progressive as the trustee under the Deed of Trust. The Deed of Trust was executed by Jeffrey L. Varnell on December 23, 2005 in favor of Option One Mortgage Corporation, and recorded in the San Mateo County Recorder's Office on December 30, 2005 as document number 2005-227129. The Substitution of Trustee was recorded on August 29, 2023 as document number 2023-041711, in the San Mateo County Recorder's Office. The Deed of Trust created a first priority security interest with power of sale against the real property described therein and commonly known as 3747 Hamilton Way, Redwood City, CA 94062. (the "Property"). Western Progressive is the foreclosure trustee ("Trustee"), with the power to foreclose on the property that arises from the Deed of Trust securing the subject loan.

5. Western Progressive reasonably believes that it has not been named as a defendant in the above-captioned action due to any acts or omissions on its part in the performance of its duties as Trustee because the facts alleged in the Complaint relate primarily to the servicing of the subject loan to which Western Progressive is not a party. I am not aware of any allegations or



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1 evidence produced to date by Plaintiff or the other named Defendants, or of any facts, documents  
2 or testimony tending to suggest that Western Progressive engaged in any misconduct in connection  
3 with the performance of its duties as Trustee. The Complaint makes no credible allegations that  
4 Western Progressive failed to perform any of its duties as a Trustee, nor have the remaining  
5 Defendants filed a Cross-Complaint against Western Progressive alleging any defect in the  
6 performance of its duties as Trustee, either under the Deed of Trust, or the applicable statutes set  
7 forth in Civil Code section 2924, *et seq.*

8 6. Western Progressive agrees to be bound by any non-monetary order or judgment  
9 that may be issued by the Court regarding the Deed of Trust.

10 I declare under penalty of perjury under the laws of the State of California and the United  
11 States that the foregoing is true and correct and that this declaration was executed this <sup>27</sup> day of  
12 February, 2024 at Fairfax, Virginia

13  
14 \_\_\_\_\_ *Kenneth Lavine* \_\_\_\_\_

15 Kenneth Lavine

16 Assistant Vice President  
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**PROOF OF SERVICE**

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action. My business address is 9970 Research Drive, Irvine, CA 92618.

On February 27, 2024 I served the following document(s) described as follows:

**DECLARATION OF NON-MONETARY STATUS OF DEFENDANT WESTERN  
PROGRESSIVE, LLC PURSUANT TO CALIFORNIA CIVIL CODE SECTION 2924I**

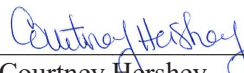
On the following interested parties in this action:

YURTSAN LAW FIRM PC  
Andrey R. Yurtsan (SBN 294760)  
3017 Douglas Blvd Ste 105  
Roseville, CA 95661  
T: (916) 500-7246  
E: ayurtsan@capitolcitylegalgroup.com  
Attorney for Plaintiff, Jeffrey L. Varnell

☒ **FIRST CLASS MAIL**—By placing a true copy thereof enclosed in a sealed envelope(s) addressed as above, and placing each for collection and mailing on the date following ordinary business practices. I am readily familiar with my firm's business practice and collection and processing of mail with the United States Postal Service and correspondence placed for collection and mailing would be deposited with the United States Postal Service at Irvine, California, with postage thereon fully prepaid that same day in the ordinary course of business.

I declare under penalty of perjury, under the laws of the State of California that the foregoing is true and correct.

Executed on February 27, 2024 at Irvine, California.

  
Courtney Hershey